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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,226	02/09/2004	Jonathan Dean Segel	ALC 3117	7748
7590 KRAMER & AMADO, P.C. 1725 Duke Street, Suite 240 Alexandria, VA 22314				
01/27/2009				
EXAMINER				
TRAN, TUNG Q				
ART UNIT		PAPER NUMBER		
2416				
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01/27/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/773,226

**Applicant(s)**

SEGEL, JONATHAN DEAN

**Examiner**

TUNG Q. TRAN

**Art Unit**

2416

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6, 8-17, 19-24, 27-30, 33, 34, 36-41 and 43-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-6, 8-17, 19-24, 27-30, 36, 38-41, 43-48 and 51 is/are allowed.
- 6) ☒ Claim(s) 33, 34, 37, 49 and 50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-848)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 5, 2008 has been entered.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 33,34,37,49 and 50 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 33, 37, and 49-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Li (US 2004/0078626) in view of Dop et al. (US 5,185,779) and

further in view of Soltysiak et al. (US 2003/0021234) and Attar et al. (US 2007/0153687).

Li discloses a system and method for failure recovery of high-speed modems (see the Title) comprising the following features.

Regarding claim 33, a method for protecting a wireline access link (see the Title), comprising the steps of: transmitting user traffic between a user site and a network provider site in a broadband access connection carried over said wireline link (see Internet access on high-speed modem recited in the Abstract); transmitting user traffic between said user site and said network provider site over a backup connection (see "switch from the high-speed modem to a dial-up modem" recited in para. [0033], page 3; and how "the data redirection software module" redirects all data recited in [0034], page 30) when said broadband access connection is suffering from performance impairment (Fig. 5, detecting high-speed modem failure in step 90; and see "detects the high-speed modem failure" recited in para. [0033] on page 3); monitoring integrity of said wireline link (see "The modem interchange software detects" recited in para. [0033] on page 3) and generating a fault signal upon detection of said performance impairment of said broadband access connection in dependence upon failure of the wireline link performance (Fig. 5, detecting high-speed modem failure in step 90; and see "detects the high-speed modem failure" and "communicates the failure to the modem backup software module" recited in para. [0033] on page 3); and switching said user traffic from said broadband access connection to a backup connection according to said fault signal (see "switch from the high-speed modem to a dial-up modem" recited in para. [0033],

page 3; and how "the data redirection software module" redirects all data recited in [0034], page 30).

Regarding claim 37, a method for protecting a wireline access link (see the Title), comprising the steps of: transmitting user traffic between a user site and a network provider site in a broadband access connection carried over said wireline link (see Internet access on high-speed modem recited in the Abstract); transmitting user traffic between said user site and said network provider site over a backup connection (see "switch from the high-speed modem to a dial-up modem" recited in para. [0033], page 3; and how "the data redirection software module" redirects all data recited in [0034], page 30) when said broadband access connection is suffering from performance impairment (Fig. 5, detecting high-speed modem failure in step 90; and see "detects the high-speed modem failure" recited in para. [0033] on page 3); monitoring integrity of said wireline link (see "The modem interchange software detects" recited in para. [0033] on page 3) and generating a fault signal upon detection of said performance impairment of said broadband access connection in dependence upon failure of the wireline link performance (Fig. 5, detecting high-speed modem failure in step 90; and see "detects the high-speed modem failure" and "communicates the failure to the modem backup software module" recited in para. [0033] on page 3); and switching said user traffic from said broadband access connection to a backup connection according to said fault signal (see "switch from the high-speed modem to a dial-up modem" recited in para. [0033], page 3; and how "the data redirection software module" redirects all data recited in [0034], page 30); normally placing no load on said backup link (see maintaining high-

speed connection available by switching back to high-speed connection whenever high-speed modem resumes recited in Fig. 10; para. [0035], [0090], Fig. 14, see steps 380 through 405 for restoring the high-speed connection).

Li discloses the claimed limitations above. Li does not disclose the following features: regarding claim 33, a wireless link; user configured threshold levels of link performance parameters; establishing said wireless link through signaling prior to said detection of said performance impairment; regarding claim 37, a wireless link; user configured threshold levels of link performance parameters; establishing said wireless link through signaling prior to said detection of said performance impairment; regarding claim 49, said performance impairment is any impairment selected from the group consisting of inadequate throughput, excessive bit error rate, excessive packet loss, excessive latency, and excessive jitter; regarding claim 50, said performance impairment is any impairment selected from the group consisting of inadequate throughput, excessive bit error rate, excessive packet loss, excessive latency, and excessive jitter.

Dop discloses the cellular alarm backup system (see the Title) comprising the following features:

Regarding claim 33, a wireless protection system comprising a wireless link processor (see cellular backup system recited in the Abstract) for connecting said user site and said provider network site over a backup connection (see cellular system transmitting call to a central alarm station recited in the Abstract); and transmitting user traffic between said user site and said network provider site over a backup connection

carried over a wireless link (see cellular system recited in the Abstract) when the primary access connection is suffering from performance impairment (see switching the telephone line over the cellular system upon a inoperativeness of the telephone line recited in the Abstract).

Regarding claim 37, a wireless protection system comprising a wireless link processor (see cellular backup system recited in the Abstract) for connecting said user site and said provider network site over a backup connection (see cellular system transmitting call to a central alarm station recited in the Abstract); and transmitting user traffic between said user site and said network provider site over a backup connection carried over a wireless link (see cellular system recited in the Abstract) when the primary access connection is suffering from performance impairment (see switching the telephone line over the cellular system upon a inoperativeness of the telephone line recited in the Abstract); the wireless link is used for backup purpose (see cellular backup system recited in the Abstract).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Li by using the features, as taught by Dop, in order to make the system more reliable by providing different alternative connections, implement the system easier, and keep it work in almost any topology.

Li and Dop disclosed the claimed limitations above. They do not disclose the following features: regarding claim 33, user configured threshold levels of link performance parameters; establishing said wireless link through signaling prior to said detection of said performance impairment; regarding claim 37, user configured

threshold levels of link performance parameters; establishing said wireless link through signaling prior to said detection of said performance impairment; regarding claim 49, said performance impairment is any impairment selected from the group consisting of inadequate throughput, excessive bit error rate, excessive packet loss, excessive latency, and excessive jitter; regarding claim 50, said performance impairment is any impairment selected from the group consisting of inadequate throughput, excessive bit error rate, excessive packet loss, excessive latency, and excessive jitter.

Soltysiak discloses methods and apparatus for burst tolerant excessive bit error rate alarm detection and clearing comprising the following features.

Regarding claim 33, wherein a user configures threshold levels of link performance parameters (see user configures BER thresholds recited in [0011]) that trigger generation of a fault signal (see an alarm state is entered if an error count exceeds a threshold recited in the Abstract).

Regarding claim 37, wherein a user configures threshold levels of link performance parameters (see user configures BER thresholds recited in [0011]) that trigger generation of a fault signal (see an alarm state is entered if an error count exceeds a threshold recited in the Abstract).

Regarding claim 49, said performance impairment may be any impairment selected from the group consisting of inadequate throughput, excessive bit error rate, excessive packet loss, excessive latency, and excessive jitter (see an alarm state is entered if an error count exceeds a threshold recited in the Abstract).



Regarding claim 50, said performance impairment may be any impairment selected from the group consisting of inadequate throughput, excessive bit error rate, excessive packet loss, excessive latency, and excessive jitter (see an alarm state is entered if an error count exceeds a threshold recited in the Abstract).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Li and Dop, by using the features, as taught by Soltysiak, in order to give user more options to control the system.

Li, Dop, and Soltysiak disclose the claimed limitations above. They do not disclose the following features: regarding claim 33, establishing said wireless link through signaling prior to said detection of said performance impairment; regarding claim 37, establishing said wireless link through signaling prior to said detection of said performance impairment.

Attar et al. discloses method and apparatus for adaptive server selection in a data communication system comprising the following features.

Regarding claim 33, establishing said wireless link through signaling prior to said detection of said performance impairment (see soft handoff and “make before break” recited in [0012]).

Regarding claim 37, establishing said wireless link through signaling prior to said detection of said performance impairment (see soft handoff and “make before break” recited in [0012]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Li, Dop, and Soltysiak by using the features, as taught by Attar, in order to prevent or minimize interruption in service. See [0045].

5. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Li (US 2004/0078626) in view of Dop et al. (US 5,185,779) and further in view of Soltysiak et al. (US 2003/0021234), Attar et al. (US 2007/0153687), and Smyth et al. (US Patent No. 6,598,229).

Li, Dop, Soltysiak, Attar disclose the claimed limitations above. They do not disclose the following features: regarding claim 34, wherein said link performance parameters include available bandwidth on the wireline link.

Smyth discloses a system and method for detecting and correcting a defective transmission channel (see the Title) comprising the following features:

Regarding claim 34, wherein said link performance parameters include available bandwidth on the wireline link (see faulty signal generated when there is no available bandwidth recited in col. 12, lines 48-58).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Li, Dop, Soltysiak, and Attar by using the features, as taught by Smyth, in order to provide a system and method for detecting and correcting a defective transmission channel in an interactive distribution system (Smyth: col. 2, lines 13-16).

***Allowable Subject Matter***

6. Claims 1-6, 8-17, 19-24, 27-30, 36, 38-41, 43-48 and 51 are allowed.

***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to TUNG Q. TRAN whose telephone number is (571)272-9737. The examiner can normally be reached on Mon-Fri: 7:30 am - 5 pm, off alternative Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kwang B. Yao can be reached on (571) 272-3182. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/T. Q. T./  
Examiner, Art Unit 2416

Art Unit: 2416

/Kwang B. Yao/

Supervisory Patent Examiner, Art Unit 2416